

ALFRED F. JAHNS
Attorney at Law

March 17, 2011

Patrick Pulupa, Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
1001 I St., 22nd Floor
Sacramento, CA 95814

Re: Proposed Resolution to Authorize the Executive Officer to Enter Into a Mutual Release and Covenant Not to Sue with Homestake Mining Company of California For the Wide Awake Mercury Mine and the Central, Cherry Hill, Empire, Manzanita, and West End Mine Properties, Colusa County, California

Dear Patrick:

In connection with the distribution of the subject Proposed Resolution, you have requested that American Land Conservancy (“ALC”) indicate whether it has any objection to the implementation of the Work Plan set forth as Attachment C to the Proposed Resolution.¹ As you are aware, the Central Valley Regional Water Quality Control Board chose not to name ALC as a “discharger” in its Technical and Monitoring Report Order R5-2010-0048 issued on May 27, 2010,² in connection with which the Proposed Resolution has been developed. As the Regional Board correctly found, ALC’s continuing property interest in the affected real property is limited to the Grant of Easement for Conservation Purposes (the “Conservation Easement”)³ which encumbers real property on which the Central, Cherry Hill, Empire, Manzanita, and West End Mines (but not the Wide Awake Mine) are located (the “Easement Area”).

¹ ERM, Mining-Related Materials Characterization and Remediation Work Plan, *Sulphur Creek Mining District Central Group and Wide Awake Mines, Colusa County, California* (September 2010).

² Order R5-2010-0048, Finding No. 54.

³ Grant of Easement for Conservation Purposes recorded December 3, 1999 as Document No. 99 085189 in the Official Records of Colusa County, California.

The Conservation Easement expressly provides that “it shall not be construed such that . . . Grantee has any control over Grantor’s ability to investigate and remediate any Hazardous Materials [as broadly defined in the Conservation Easement] associated with the Property.” Accordingly, ALC’s consent is not required for the landowner to authorize entry upon the Easement Area for those purposes. Assuming that no broader authorization is required from the landowner for the implementation of the Work Plan, ALC confirms that does not have any basis under the Conservation Easement for objection to implementation of the Work Plan.

We also note, however, that disposal on the Easement Area of mining waste derived from outside of the Easement Area would constitute a breach of the provisions of Exhibit B, ¶ 8 of the Conservation Easement, which prohibit “dumping or accumulation of trash, hazardous materials, ashes, garbage, inoperative vehicles, waste or other unsightly or offensive material on the Property.” Nothing in this letter shall be deemed, interpreted or construed to be waiver of a breach of that prohibition.

Sincerely yours,



Alfred F. Jahns
Attorney for American Land Conservancy

cc: Kerry O’Toole (President, ALC)